

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FARMWORKER INSTITUTE OF
EDUCATION AND LEADERSHIP
DEVELOPMENT, INC.

Employer

and

Case 31-RC-164338

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND
HELPERS, AFL-CIO

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, CHAIRMAN

LAUREN McFERRAN, MEMBER

¹ In denying review, we agree with the Regional Director, for the reasons she stated, that the Employer charter school is not exempt as a political subdivision under Sec. 2(2) of the National Labor Relations Act. We find that the Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) ("*Hawkins County*"), in finding that the Employer was neither created directly by the state so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate. We do not, however, rely on the Regional Director's citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 1345 S. Ct. 2550 (2014). Instead, we find that the Regional Director's analysis is consistent with *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016) and *Hyde Leadership Charter School*, 364 NLRB No. 88 (2016). In each of those cases, the Board applied the *Hawkins County* test to a charter school operating pursuant to a state statute, whose creation by individual applicants and governance by its board of trustees exhibit only minor, non-substantive differences from the instant case. In asserting jurisdiction in those cases, the Board rejected arguments similar to those raised by the Employer in this case.

Member Miscimarra, dissenting:

I would grant the Employer's Request for Review and dismiss the petition. The Employer operates a charter school chartered by the Nevada County, California Board of Education and the California State Board of Education pursuant to the California Charter Schools Act of 1992. For the reasons fully explained in my dissenting opinions in *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 11-18 (2016) (Member Miscimarra, dissenting), and *Hyde Leadership Charter School*, 364 NLRB No. 88, slip op. at 14-15 (2016) (Member Miscimarra, dissenting), I believe the Board should decline to assert jurisdiction over charter schools generally and in this case.

PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., November 7, 2016.